

OD-4

ORDER SHEET
WPO No.807 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. MULTIBUILD PROPERTIES PVT. LTD.
Versus
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 4th April, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Supratik Shyamal, Adv.
Ms. Sonali Sengupta, Adv.
...for Petitioner.

Mr. Gopal Chanadra Das, Adv.
Mr. Dwijadas Chakraborty, Adv.
...for KMC.

The Court:-Challenging an order passed under Section 400(1) of the Special Officer (Building) dated 30.05.2022 the petitioner has preferred an appeal before the learned Municipal Building Tribunal on 23.03.2023.

The said appeal was filed after leave was granted to the petitioner in the earlier writ petition being WPO No. 423 of 2023.

The Executive Engineer, Building Department, Borough-II, possibly being unaware of the direction passed in the order dated 21.03.2023, issued notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 and fixed demolition on 04.04.2023 i.e. today, as the date when the men and agents of the Kolkata Municipal Corporation will enter the premises no.140, Sri Aurobinda Sarani, Ward No.11, Borough-II, Kolkata-700006 for demolishing the same.

A further notice under Section 412(2) of the Kolkata Municipal Corporation Act was issued on 01.04.2023 with request to the Officer-in-Charge,

Burtolla Police Station to take steps for vacating the unauthorized portion which is to be demolished.

According to Section 412(1) of the Kolkata Municipal Corporation Act, 1980, the Municipal Commissioner may, by order in writing, direct that any building, which in his opinion is in a dangerous condition or is not provided with sufficient means of egress in case of fire or is occupied in contravention of Section 396 or Section 403, be vacated forthwith or within such period as may be specified in the order.

Section 412(2) lays down that if any person fails to vacate the building in pursuance of such order, the Municipal Commissioner may direct any police officer to remove such person from the building and the police officer shall comply with such direction.

In the present case, there is nothing on record to show that an order was issued by the Municipal Commissioner under Section 412(1) of the Act. Without the order by the Municipal Commissioner directing the building to be vacated, subsequent notice under Section 412(2) cannot be issued.

The order under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 specifies the infringement made at the time of raising construction. The same is under scrutiny before the learned Municipal Building Tribunal. If the structure in question is demolished prior to a decision being taken by the appellate authority, the appeal itself will be rendered infructuous and the petitioner will remain remediless.

The petitioner has averred in the writ petition that the appeal was preferred before the learned Tribunal on 23.03.2023 along with an application for stay and application for condonation of delay. The same has been registered

as B.T. Appeal No.77 of 2023 and 20.04.2023 is the date fixed for filing the service return.

The Court is not made aware whether the fact of filing the appeal and fixing of the date by the learned Tribunal was brought to the notice of the concerned Executive Engineer (Building), Kolkata Municipal Corporation.

Be that as it may, as it appears that the learned Municipal Building Tribunal has already fixed 20.04.2023 as the date for service return, accordingly, the Executive Engineer (Building), Borough-II, Kolkata Municipal Corporation is restrained from giving any effect or further effect to the impugned notice dated 01.04.2023 under Sections 544 & 546 of the Kolkata Municipal Corporation Act and further notice under Section 412(2) of the Kolkata Municipal Corporation Act, 1980 till 19.05.2023 or until further order, whichever is earlier.

Learned advocate appearing for the petitioner is directed to immediately communicate this order to the concerned Executive Engineer. The appellant before the learned Tribunal is directed to draw attention with regard to the aforesaid impugned notices and pray for necessary direction before the appellate authority.

Learned advocate appearing for the Kolkata Municipal Corporation is also directed to communicate this order to the concerned officer.

The concerned Executive Officer is directed to immediately transmit the records of the present case to the learned Municipal Building Tribunal so that the matter may be adjudicated properly on the date fixed by the Tribunal. The Tribunal is requested to ensure that the appeal is heard, considered and

disposed of without granting any unnecessary adjournment to either of the parties.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)

nm